

**Tentative Rulings for October 5, 2022**  
**Department 502**

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There are no tentative rulings for the following cases. The hearing will go forward on these matters. If a person is under a court order to appear, he/she must do so. Otherwise, parties should appear unless they have notified the court that they will submit the matter without an appearance. (See California Rules of Court, rule 3.1304(c).)

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The court has continued the following cases. The deadlines for opposition and reply papers will remain the same as for the original hearing date.

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(Tentative Rulings begin at the next page)

## **Tentative Rulings for Department 502**

Begin at the next page

(35)

**Tentative Ruling**

Re: ***SunOpta Global Organic Ingredients, Inc. v. Initiative Foods, LLC et al.***

Superior Court Case No. 17CECG01984

Hearing Date: October 5, 2022 (Dept. 502)

Motion: by plaintiff to enforce settlement

**Tentative Ruling:**

To continue the hearing to October 12, 2022 at 3:30 p.m. in Department 502. To direct plaintiff to submit verification of proof of service of its motion.

**Explanation:**

Plaintiff seeks to enforce a settlement agreement under Code of Civil Procedure section 664.6, which states, in pertinent part, that: "[i]f parties to pending litigation stipulate, in a writing signed by the parties outside of the presence of the court . . . for settlement of the case . . . the court, upon motion, may enter judgment pursuant to the terms of the settlement." Written notice shall be given for a motion seeking to enforce a settlement under Code of Civil Procedure section 664.6 relief. (Code Civ. Proc. § 1005, subd. (a)(13).)

Plaintiff submits proof of service of the present motion "ELECTRONICALLY: Via the Odyssey website...." Odyssey has no function to effect service by the mere filing of pleadings. To the extent that the proof purports effectuated electronic service, Code of Civil Procedure section 1010.6 controls. Code of Civil Procedure section 1010.6 provides, in pertinent part:

For cases filed on or after January 1, 2019, if a document may be served by mail, express mail, overnight delivery, or facsimile transmission, electronic service of the document is authorized if a party or other person has expressly consented to receive electronic service in that specific action, the court has ordered electronic service on a represented party or other represented person under subdivision (c) or (d), or the document is served electronically pursuant to the procedures specified in subdivision (e). Express consent to electronic service may be accomplished either by (I) serving a notice on all the parties and filing the notice with the court, or (II) manifesting affirmative consent through electronic means with the court or the court's electronic filing service provider, and concurrently providing the party's electronic address with that consent for the purpose of receiving electronic service. The act of electronic filing shall not be construed as express consent. (Code Civ. Proc. § 1010.6, subd. (a)(2)(A)(ii).)

No evidence as proscribed by Code of Civil Procedure section 1010.6 was submitted in support of an authorized electronic service.

Plaintiff is directed to submit proof of service of the present motion, on or before 9:00 a.m. on October 10, 2022, for further consideration.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

**Tentative Ruling**

**Issued By:** RTM **on** 10/4/2022.  
(Judge's initials) (Date)

(34)

**Tentative Ruling**

Re: **Fernandez v. FCA US, LLC**  
Superior Court Case No. 19CECG00774

Hearing Date: October 5, 2022 (Dept. 502)

Motion: by Plaintiff for Attorney's Fees

**Tentative Ruling:**

To continue the hearing to October 26, 2022 at 3:30 p.m. in Department 502. Plaintiff's reply, if any, to be filed by October 19, 2022.

**Explanation:**

Two oppositions on behalf of defendant FCA US, LLC were filed on July 13, 2022. The first was filed by Jon D. Universal of Universal & Shannon LLP and the second by Vanessa V. Dao of Clark Hill LLP. Plaintiff's reply addresses the opposition filed by Mr. Universal. On July 20, 2022 a substitution of attorney was filed indicating FCA US, LLC consented to the substitution of the Clark Hill LLP law firm for its representation in this action as of June 2, 2022 and Attorney Brain M. Horn consented to the substitution on behalf of Clark Hill LLP on July 5, 2022. (See Substitution of Attorney filed July 20, 2022.)

Where authorized by the client, as appears is the case here, the new attorney may act on the client's behalf even before a substitution of attorney is obtained. (*Baker v. Boxx* (1991) 226 Ca.App.3d 1303, 1309 ["Where the actual authority of the new or different attorney appears, courts regularly excuse the absence of record of a formal substitution and validate the attorney's acts, particularly where the adverse party has not been misled or otherwise prejudiced."].) To eliminate the possibility of prejudice to plaintiff in the late filing of this substitution, the court will continue the hearing on the motion to October 26, 2022 and allow plaintiff to file a reply to the opposition filed by Clark Hill LLP by October 19, 2022.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

**Tentative Ruling**

Issued By: RTM on 10/3/2022.  
(Judge's initials) (Date)

(20)

**Tentative Ruling**

Re: **Esquivel v. Lopez**  
Superior Court Case No. 20CECG03703

Hearing Date: October 5, 2022 (Dept. 502)

Motion: Plaintiff's Motion to Deem Requests for Admissions Admitted  
and for Monetary Sanctions

**Tentative Ruling:**

To grant.

**Explanation:**

On June 1, 2022, plaintiff mail served on defendant Request for Admissions, Set Two. The response was due July 6, 2022. (See Vecchiarelli Decl., Ex. A; Code Civ. Proc., § 2033.250, 2016.050.) No response has been provided. Accordingly, the court must order admitted all matters specified in the requests for admission. (Code Civ. Proc., § 2033.280, subd. (b).) This will be the order of the court unless defendant serves, before the hearing on the motion, a proposed response to the requests for admission that is in substantial compliance with Code of Civil Procedure section 2033.220. Defendant has filed no opposition to this motion.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

**Tentative Ruling**

Issued By: RTM on 10/4/22.  
(Judge's initials) (Date)